Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–FV–10–0094; FV11–985–1 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2011–2012 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2011–2012 marketing year, which begins on June 1, 2011. This rule invites comments on the establishment of salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 694,774 pounds and 34 percent, respectively, and for Class 3 (Native) spearmint oil of 1,012,983 pounds and 44 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

DATES: Comments must be received by April 4, 2011.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, which handlers may purchase from, or handle on behalf of, producers during the 2011–2012 marketing year, which begins on June 1, 2011.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Committee meets annually in the fall to adopt a marketing policy for the ensuing marketing year or years. In determining such marketing policy, the Committee considers a number of factors, including, but not limited to, the current and projected supply, estimated future demand, production costs, and producer prices for all classes of spearmint oil, as well as input from spearmint oil handlers and producers regarding prospective marketing conditions. During the meeting, the Committee recommends to USDA any volume regulations deemed necessary to meet market requirements and to establish orderly marketing conditions for Far West spearmint oil. If the Committee's marketing policy considerations indicate a need for limiting the quantity of any or all classes of spearmint oil marketed, the Committee subsequently recommends the establishment of a salable quantity and allotment percentage for such class or classes of oil for the forthcoming marketing year.

The salable quantity represents the total amount of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the marketing year. Each producer is allotted a prorated share of the salable quantity by applying the allotment percentage to that producer's allotment base for each applicable class of spearmint oil. The producer allotment base is each producer's quantified share

of the spearmint oil market based on a statistical representation of past spearmint oil production and the accommodation for reasonable and normal adjustments to such base as prescribed by the Committee and approved by USDA. Salable quantities are established at levels intended to meet market requirements and to establish orderly marketing conditions. Committee recommendations for volume controls are made well in advance of the period in which the regulations are to be effective, thereby allowing producers the chance to adjust their production decisions accordingly.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the full eight-member Committee met on October 13, 2010, and recommended salable quantities and allotment percentages for both classes of oil for the 2011–2012 marketing year. The Committee, in a vote of six members in favor and two members opposed, recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 694,774 pounds and 34 percent, respectively. The two members opposing the action favored an undetermined greater salable quantity and allotment percentage for Scotch spearmint oil. For Native spearmint oil, the Committee unanimously recommended the establishment of a salable quantity and allotment percentage of 1,012,983 pounds and 44 percent, respectively.

This rule would limit the amount of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2011–2012 marketing year, which begins on June 1, 2011. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

Class 1 (Scotch) Spearmint Oil

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, Oregon, and a portion of Nevada and Utah. Scotch type oil is also produced in seven other States: Indiana, Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin. Additionally, Scotch spearmint oil is produced outside of the U.S., with China and India being the largest global competitors of domestic Scotch spearmint oil production.

The Far West's share of total global Scotch spearmint oil sales has varied considerably over the past several decades, from 72 percent in 1980 to 27 percent in 2002. Recently, sales of Far West Scotch spearmint oil have risen to over 48 percent of world sales, and are expected to hold steady, or go even higher, in the coming years.

In spite of the Far West's growing share of the world market for Scotch spearmint oil, the industry has faced some stressful marketing conditions during the most recent marketing years. Spearmint oil producers experienced relatively good economic conditions in the years from 2004 through 2007, which led to overproduction and an environment of excess supply in the market beginning in 2008 and continuing through 2010. The Far West region, which produced 635,508 pounds of Scotch spearmint oil in 2004, produced 1,050,700 pounds just five years later in 2009, a 65 percent increase.

To compound matters, in addition to increasing overproduction concerns, the demand for Far West Scotch spearmint oil began to actually decline over this period. Sales peaked in 2005 at 1,002,779 pounds, declining to 627,868 pounds in 2009. With production rising and sales dropping, excess inventory of uncommitted Scotch spearmint oil began to accumulate. Scotch spearmint oil carry-in (unsold salable quantity from prior years that is available for sale at the beginning of a new marketing year), which serves as a measure of oversupply in the market, grew from 23,141 pounds in 2007 to 431,028 pounds in 2010.

The Committee's response to the deteriorating marketing environment since 2008 has been to recommend the tightening of volume control regulations. The Committee, which recommended a 2008–2009 marketing year Scotch spearmint oil salable quantity of 993,067 pounds, dropped the recommendation to 802,067 pounds for the 2009–2010 marketing year, and to only 566,962 pounds for the 2010–2011 marketing year. Similarly, the recommended allotment percentage was reduced from 50 percent for the 2008–2009 period to 40 percent for 2009–2010, and down to just 28 percent for 2010–2011.

When the Committee met in October 2010 to consider volume regulation for the 2011–2012 marketing year, many of the previously mentioned negative marketing conditions still persisted. Even while showing some signs of incremental improvement, the current inventories, expected production, and projected demand of Scotch spearmint oil were all at levels considered unhealthy for the industry.

The Committee estimates that the carry-in of Scotch spearmint oil on June 1, 2011, the primary measure of excess supply, will be approximately 197,551 pounds. That quantity, while down from the previous year's high of 431,028 pounds, would still be above what the Committee considers to be optimum.

Overproduction of Scotch spearmint oil, while improving, also continues to be an area of concern for the Committee. Production of Far West Scotch spearmint oil has declined, from a high of 1,050,700 pounds in 2009, to 868,487 pounds in 2010, and the Committee expects it to drop even further during the 2011 season. The recent declining trend in Scotch spearmint oil production is viewed by the Committee as a positive development and is expected to contribute some relief to the industry's oversupply situation.

In addition, spearmint oil handlers indicated that demand for Scotch spearmint oil might be gaining strength. Handlers that had projected that the trade demand for Far West Scotch oil would range from a low of 750,000 pounds to a high of 850,000 pounds for the 2010–2011 marketing year, expect the trade demand to be within a range of 800,000 pounds to 900,000 pounds for the 2011–2012 period.

However, this increase in projected Scotch demand, generally thought of as a positive indicator for the industry, is viewed cautiously by some industry participants. Consumer demand for mint flavored products is reportedly steady, providing optimism for long term increases in the demand for Far West spearmint oil. Some handlers, though, believe that the manufacturers of such products are currently increasing spearmint oil purchases just to rebuild inventories that were depleted during the worst of the recent U.S. economic recession. As such, those handlers feel that at least some of the recent increase in Scotch spearmint oil sales may not represent an actual increase in sustained demand, but a temporary response to fluctuations in the strategic inventories of the manufacturers.

Still, given the moderately improving economic indicators for the Far West Scotch spearmint oil industry outlined above, the Committee took a cautiously optimistic perspective into the discussion of establishing appropriate salable quantities and allotment percentages for the upcoming season.

Therefore, at the October 13, 2010, meeting, the Committee recommended the 2011–2012 Scotch spearmint oil salable quantity of 694,774 pounds and allotment percentage of 34 percent. The Committee utilized sales estimates for 2011–2012 Scotch spearmint oil, as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil production

and inventory statistics, to arrive at those recommendations. The volume control levels recommended by the Committee represent a 127,812 pound and 6 percentage point increase over the previous year's salable quantity and allotment percentage, reflecting a more positive assessment of the industry's economic conditions.

The Committee estimates that about 800,000 pounds of Scotch spearmint oil may be sold during the 2011–2012 marketing year. When considered in conjunction with the estimated carry-in of 197,551 pounds of Scotch spearmint oil on June 1, 2011, the recommended salable quantity of 694,774 pounds results in a total available supply of approximately 892,325 pounds of Scotch spearmint oil during the 2011–2012 marketing year. The Committee estimates that carry-in of Scotch spearmint oil into the 2012–2013 marketing year, which begins June 1, 2012, would be 92,325 pounds, a decrease of 105,226 pounds from the beginning of the 2011–2012 marketing year.

The Committee's stated intent in the use of marketing order volume control regulations for Scotch spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation for the proposed Scotch spearmint oil salable quantity and allotment percentage for the 2011–2012 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2011—197,551 pounds.* This figure is the difference between the revised 2010–2011 marketing year total available supply of 997,551 pounds and the estimated 2010–2011 marketing year trade demand of 800,000 pounds.

(B) *Estimated trade demand for the 2011–2012 marketing year—800,000 pounds.* This figure is based on input from producers at six Scotch spearmint oil production area meetings held in late September and early October 2010, as well as estimates provided by handlers and other meeting participants at the October 13, 2010, meeting. The average estimated trade demand provided at the six production area meetings is 800,000 pounds, which is 33,333 pounds less than the average of the trade demand estimates submitted by handlers. The average of Far West Scotch spearmint oil sales over the last five years is 789,243 pounds.

(C) *Salable quantity required from the 2011–2012 marketing year production—602,449 pounds.* This figure is the difference between the estimated 2011–2012 marketing year trade demand (800,000 pounds) and the estimated carry-in on June 1, 2011 (197,551 pounds). This figure represents the minimum salable quantity that may be needed to satisfy estimated demand for the coming year with no carryover.

(D) *Total estimated allotment base for the 2011–2012 marketing year—2,043,453 pounds.* This figure represents a one percent increase over the revised 2010–2011 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—29.5 percent.* This percentage is computed by dividing the minimum required salable quantity by the total estimated allotment base.

(F) *Recommended allotment percentage—34 percent.* This is the Committee's recommendation and is based on the computed allotment percentage (29.5 percent), the average of the computed allotment percentage figures from the six production area meetings (31 percent), and input from producers and handlers at the October 13, 2010, meeting. The actual recommendation of 34 percent is based on the Committee's determination that the computed percentage (29.5 percent) may not adequately supply the potential 2011–2012 Scotch spearmint oil market.

(G) *The Committee's recommended salable quantity—694,774 pounds.* This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) *Estimated available supply for the 2011–2012 marketing year—892,325 pounds.* This figure is the sum of the 2011–2012 recommended salable quantity (694,774 pounds) and the estimated carry-in on June 1, 2011 (197,551 pounds).

Class 3 (Native) Spearmint Oil

The Native spearmint oil industry is facing market conditions that are very similar to those affecting the Scotch spearmint oil market, although not nearly as severe. Over 90 percent of U.S. production of Native spearmint oil is produced within the Far West production area, thus domestic production outside this area is not a major factor in the marketing of Far West Native spearmint oil. This has been an attribute of U.S. production since the order's inception. A minor amount of domestic Native spearmint oil is produced outside of the Far West region in the States of Indiana, Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin.

According to the Committee, very little true Native spearmint oil is produced outside of the United States. However, India produces an increasing quantity of spearmint oil with qualities very similar to Native spearmint oil. Committee records show that in 1996 the Far West accounted for nearly 93 percent of the global sales of Native or Native quality spearmint oil. By 2008 that share had shrunk to a low of 48 percent. Since that point, however, the percentage has rebounded and is now estimated to be over 57 percent for 2010.

In spite of the fact that Far West Native spearmint oil has been gaining world market share, the industry has endured challenging marketing conditions over the past several marketing years. Overproduction, coupled with a decrease in demand, created a similar oversupply situation for Native spearmint oil as was previously discussed for Scotch spearmint oil. Production of Native spearmint oil in the Far West region was 701,372 pounds in 2004, but increased to 1,453,896 pounds just five years later in 2009, a 107 percent increase. In addition, over that same timeframe, demand for Native oil was moving in the opposite direction. Sales of Far West Native oil peaked in 2004 at 1,249,507 pounds. From that cyclical high, sales steadily declined over the next five years, dropping to just 976,888 pounds by 2009. As production rose and sales dropped, excess inventory of uncommitted Native spearmint oil began to accumulate. Carry-in of Native oil measured at the beginning of each marketing year, which serves as a measure of oversupply in the market, grew from 83,417 pounds at the beginning of the 2007–2008 marketing year to 343,517 pounds at the beginning of the 2010–2011 marketing year.

The Committee's response to the difficult marketing environment for Native spearmint oil over the 2008 through 2010 period was similar to the response to the situation with Scotch spearmint oil over that time, to recommend the moderate tightening of volume control regulations. The Committee, which recommended a 2008–2009 Native spearmint oil salable quantity of 1,178,946 pounds, maintained a similar recommendation for the 2009–2010 marketing year and then dropped its recommendation to 953,405 pounds for the 2010–2011 marketing year. Similarly, the recommended allotment percentage, which was 53 percent for the 2008–2009 and 2009–2010 periods, was

recommended to be reduced to just 43 percent for 2010–2011.

Although improving, many of the negative marketing conditions present leading up to the the 2010–2011 marketing year were still evident when the Committee met to consider volume regulation for the upcoming 2011–2012 marketing year. The June 1, 2011, carry-in of Native spearmint oil on June 1, 2011, is estimated to be 216,737 pounds, down from the previous year's high of 343,517 pounds, but still at a level above what the Committee believes to be optimum.

Also, production of Native spearmint oil, while showing some signs of improvement, still remains an area of concern for the Committee. Production of Far West Native spearmint oil, which declined from a high of 1,453,896 pounds in 2009 to 1,244,361 pounds in 2010, is still considered by the Committee to be high relative to the current level of demand and the excess inventory of Native spearmint oil. However, the Committee believes that the declining trend in Native spearmint oil production may continue into the 2011 season and that much of the pressure on the industry's current oversupply situation may be relieved moving forward.

In addition to an improved supply situation, demand for Far West Native spearmint oil appears to have halted its downward movement and is expected to improve in the coming year. Spearmint oil handlers, who projected that the 2010–2011 trade demand for Far West Native spearmint oil would range from a low of 1,050,000 pounds to a high of 1,200,000 pounds, have increased their projections modestly for the 2011–2012 period to a range of 1,100,000 pounds to 1,200,000 pounds.

However, similar to Scotch spearmint oil, the small increase in projected Native spearmint oil demand, generally thought of as a positive indicator for the industry, is viewed by some handlers with caution. As mentioned previously, consumer demand for mint flavored products is expected to be steady or increase slightly moving forward, which provides optimism for long term improvement in the demand for Far West spearmint oil. Some handlers, though, have reported that the manufacturers of such products may just be temporarily increasing purchases of spearmint oil to rebuild inventories that were depleted during the worst of the current U.S. economic recession. As such, the handlers believe that at least some of the recent increase in purchases do not represent an actual increase in sustained demand but, rather, a short term response to fluctuations in the strategic inventories of the manufacturers.

Given the moderately improving economic indicators for the Far West Native spearmint oil industry outlined above, the Committee took a cautiously optimistic perspective into the discussion of establishing appropriate salable quantities and allotment percentages for the upcoming season.

As such, at the October 13, 2010, meeting, the Committee recommended a 2011–2012 Native spearmint oil salable quantity of 1,012,983 pounds and an allotment percentage of 44 percent. The Committee utilized sales estimates for 2011–2012 Native spearmint oil, as provided by several of the industry's handlers, as well as historical and current Native spearmint oil market statistics to establish these thresholds. The recommended volume control levels represent a 32,763 pound and a 1 percentage point increase over the previous year's salable quantity and allotment percentage. Even with these increases in the salable quantity and allotment percentages, the carry-in at the beginning of the 2012–2013 marketing year is projected to drop by 117,018 pounds.

The Committee estimates that approximately 1,130,000 pounds of Native spearmint oil may be sold during the 2011–2012 marketing year. When considered in conjunction with the estimated carry-in of 216,737 pounds of Native spearmint oil on June 1, 2011, the recommended salable quantity of 1,012,983 pounds results in a total available supply of about 1,229,719 pounds of Native spearmint oil during the 2011–2012 marketing year. The Committee estimates that carry-in of Native spearmint oil at the beginning of the 2012–2103 marketing year to be 99,719 pounds, a significant reduction from the previous year's level of 216,737 pounds.

The Committee's stated intent in the use of marketing order volume control regulations for Native spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation for the proposed Native spearmint oil salable quantity and allotment percentage for the 2011–2012 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2011—216,737 pounds.* This figure is the difference between the revised 2010–2011 marketing year total available supply of 1,323,737 pounds and the estimated 2010–2011 marketing year trade demand of 1,107,000 pounds.

(B) *Estimated trade demand for the 2011–2012 marketing year—1,130,000 pounds.* This estimate is established by the Committee and is based on input from producers at the seven Native spearmint oil production area meetings held in late September and early October 2010, as well as estimates provided by handlers and other meeting participants at the October 13, 2010, meeting. The average estimated trade demand provided at the seven production area meetings was 1,130,238 pounds, whereas the handler estimate ranged from 1,100,000 pounds to 1,200,000 pounds.

(C) *Salable quantity required from the 2011–2012 marketing year production—913,263 pounds.* This figure is the difference between the estimated 2011–2012 marketing year trade demand (1,130,000 pounds) and the estimated carry-in on June 1, 2011 (216,737 pounds). This is the minimum amount that the Committee believes would be required to meet the anticipated 2011–2012 Native spearmint oil trade demand.

(D) *Total estimated allotment base for the 2011–2012 marketing year—2,302,233 pounds.* This figure represents a one percent increase over the revised 2010–2011 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—39.7 percent.* This percentage is computed by dividing the required salable quantity (913,263 pounds) by the total estimated allotment base (2,302,233 pounds).

(F) *Recommended allotment percentage—44 percent.* This is the Committee's recommendation based on the computed allotment percentage (39.7 percent), the average of the computed allotment percentage figures from the seven production area meetings (39.7 percent), and input from producers and handlers at the October 13, 2010, meeting. The actual recommendation of 44 percent is based on the Committee's determination that the computed percentage (39.7 percent) may not adequately supply the potential 2011–2012 Native spearmint oil market.

(G) *The Committee's recommended salable quantity—1,012,983 pounds.* This figure is the product of the recommended allotment percentage (44 percent) and the total estimated allotment base (2,302,233 pounds).

(H) *Estimated available supply for the 2011–2012 marketing year—1,229,720 pounds.* This figure is the sum of the

2011–2012 recommended salable quantity (1,012,983 pounds) and the estimated carry-in on June 1, 2011 (216,737 pounds).

The salable quantity is the total quantity of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 694,774 pounds and 34 percent, and 1,012,983 pounds and 44 percent, respectively, are based on the goal of establishing and maintaining market stability. The Committee anticipates that this goal would be achieved by matching the available supply of each class of Spearmint oil to the estimated demand of such, thus avoiding extreme fluctuations in inventories and prices.

The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which might develop during the marketing year could be satisfied by an intra-seasonal increase in the salable quantity. The order makes this provision for an intra-seasonal increase to allow the Committee the flexibility to respond quickly to changing market conditions. In addition, producers who produce more than their annual allotments during the 2011–2012 marketing year may transfer such excess spearmint oil to producers with production less than their annual allotment, or, up until November 1, 2011, place it into the reserve pool to be released in the future in accordance with market needs.

This proposed regulation, if adopted, would be similar to regulations issued in prior seasons. The average allotment percentage for the five most recent marketing years for Scotch spearmint oil is 42 percent, while the average allotment percentage for the same five-year period for Native spearmint oil is 51 percent. Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this proposed rule, USDA has reviewed the Committee's marketing policy statement for the 2011–2012 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, fully meets the intent of § 985.50 of the order.

During its discussion of potential 2011–2012 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2011–2012 season in order to meet anticipated market demand.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight spearmint oil handlers subject to regulation under the order, and approximately 38 producers of Scotch spearmint oil and approximately 84 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 38 Scotch spearmint oil producers and 29 of the 84 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, a majority of spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk from market fluctuations. Such small producers generally need to market their entire annual allotment and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class that handlers may purchase from, or handle on behalf of, producers during the 2011–2012 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by matching supply to estimated demand thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities to be purchased or handled during the marketing year through volume regulations allows producers to plan their spearmint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this rule.

Instability in the spearmint oil sub-sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by handlers. Demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil will likely expand slowly, in line with population growth.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have virtually no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of relatively high production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The significant variability of the spearmint oil market is illustrated by the fact that the coefficient of variation (a standard measure of variability; "CV") of Far West spearmint oil production from 1980 through 2009 was about 0.23. The CV for spearmint oil grower prices was about 0.16 for that period, well below the CV for production. This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 48 percent of the 30-year average (1.89 million pounds from 1980 through 2009) and the largest crop was approximately 163 percent of the 30-year average. A key consequence is that in years of oversupply and low prices the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service.)

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the marketing order, can create liquidity problems for some producers. The marketing order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the increase in production costs. While prices have been relatively steady, the cost of production has increased to the extent that plans to plant spearmint may be postponed or changed indefinitely. Producers are also enticed by the prices of alternative crops and their lower cost of production.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil of each applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to increase the salable quantity and allotment percentage for a class of oil and make a portion of the pool available. However, limited quantities of reserve oil are typically sold by one producer to another producer to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies. All of these provisions need to be exercised prior to November 1 of each year.

In any given year, the total available supply of spearmint oil is composed of current production plus carry-over stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carryout. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool stocks, which are increased in large production years, are drawn down in years where the crop is short.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated the trade demand for the 2011–2012 marketing year for both classes of oil at 1,930,000 pounds, and that the expected combined carry-in will be 414,288 pounds. This results in a combined required salable quantity of 1,515,712 pounds. With volume control, sales by producers for the 2011–2012 marketing year would be limited to 1,707,757 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended allotment percentages, upon which 2011–2012 producer allotments are based, are 34 percent for Scotch and 44 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and

sell additional spearmint. The econometric model estimated a $1.89 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The surplus situation for the spearmint oil market that would exist without volume controls in 2011–2012 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for both classes of spearmint oil because of the severe price-depressing effects that would occur without volume control.

After computing the initial 29.5 percent Scotch spearmint oil allotment percentage, the Committee considered various alternative levels of volume control for Scotch spearmint oil. Considered levels ranged from 30 percent to 40 percent. Given the moderately improving marketing conditions, there was consensus that the allotment percentage for 2011–2012 should be more than the percentage established for the 2010–2011 marketing year (28 percent). After considerable discussion, in a vote of six members in favor and two members opposed, the Committee determined that 694,774 pounds and 34 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2011–2012 marketing year. The two dissenting members felt that the salable quantity and allotment percentage should be set at some unidentified higher level.

The Committee was also able to reach a consensus regarding the level of volume control for Native spearmint oil. After first determining the computed allotment percentage at 39.7 percent, the Committee voted unanimously to recommend 1,012,983 pounds and 44 percent for the effective salable quantity and allotment percentage, respectively, for the 2011–2012 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended would achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2011–2012 could decline substantially below current levels.

According to the Committee, the recommended salable quantities and allotment percentages are expected to facilitate the goal of establishing orderly marketing conditions for Far West spearmint oil.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0178, Vegetable and Specialty Crops. Accordingly, this rule would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 13, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is deemed appropriate to allow interested persons the opportunity to respond to this proposal, taking into account that the marketing year begins on June 1, 2011. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.230 is added to read as follows: [**Note:** This section will not appear in the Code of Federal Regulations.]

§ 985.230 Salable quantities and allotment percentages—2011–2012 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2011, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 694,774 pounds and an allotment percentage of 34 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,012,983 pounds and an allotment percentage of 44 percent.

Dated: February 25, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–4810 Filed 3–3–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0010; Airspace Docket No. 11–AAL–1]

RIN 2120–AA66

Proposed Amendment of Federal Airways; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise all Anchorage, AK, Federal airways that are affected by the relocation of the Anchorage VHF Omnidirectional Range (VOR) navigation aid. This action is necessary for the safety and management of Instrument Flight Rules (IFR) within the National Airspace System.

DATES: Comments must be received on or before April 18, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; *telephone:* (202) 366–9826. You must identify FAA Docket No. FAA–2011–0010 and Airspace Docket No. 11–AAL–1 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace, Regulation and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0010 and Airspace Docket No. 11–AAL–1) and be submitted in triplicate to the Docket Management Facility (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2011–0010 and Airspace Docket No. 11–AAL–1." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Alaskan Service Center, Operations Support Group, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Anchorage VOR, located on Fire Island, is one of the navigation aids used to form points along numerous Federal airways in Alaska. Due to construction of wind turbines on Fire Island, AK, the Anchorage VOR is being relocated to Ted Stevens Anchorage International Airport and renamed. In addition, the equipment is being upgraded to a DOPPLER VOR/distance measuring equipment (VOR/DME) facility that would improve coverage and reliability. Due to the relocation, the published radials from the old Anchorage VOR/DME, as used in each route description, will change by several degrees.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to amend Federal airways that currently use the Anchorage (ANC) VOR located on Fire Island, AK. The ANC VOR is being upgraded to a Doppler VOR and redesignated as the Anchorage (TED) VOR. The Doppler VOR will be located on the Ted Stevens Anchorage International Airport property. This action would affect 15 Low Altitude Federal airways (Victor Airways and T–Routes), and 14 High Altitude Federal airways (Jet Routes and Q–Routes). In addition to these airways using the TED VOR as the new reference point, the descriptions would be adjusted, where necessary, to show new radials to describe airway intersections.

VOR Federal airways, United States Area Navigation Routes (low), Jet Routes, Alaska Area Navigation Routes, and United States Area Navigation Routes (high), are published in paragraphs 6010, 6011, 2004, 2005, and 2006, respectively, of FAA Order 7400.9U, dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Federal Airways listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated